IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 17411 of 2007(W)

OS.156/2005 of ADDL.SUB COURT, IRINJALAKUDA

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PETITIONER:

NASEERA (MINOR) REPRESENTED BY FATHER,
MOHAMMEDALI, AGED 58 YEARS, S/O.ALI,
KORATTIPARAMBIL HOUSE, KATTOOR, THRISSUR DT.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

RESPONDENTS:

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1. KOTTOOR POMPE ST.MARY'S V.H.S.S.
REPRESENTED BY MANAGER, TOMI A.ALAPPAT,
KATTOOR, THRISSUR DT.

2. PANIKULAM LUVIS, MANAGING COMMITTEE
TREASURER, KOTTOOR POMPE ST.MARY'S V.H.S.S.,
KATTOOR, THRISSUR DT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 17411 OF 2007 W

Dated this the 7th June, 2007.

JUDGMENT

This writ petition is filed seeking to quash the order in I.A.191/07 in O.S.156/05 pending before the Additional Subordinate Judge, Irinjalakuda. The plaintiff, a minor is represented by a guardian and a suit is instituted for realisation of damages of Rs.7,45,000/- from the defendants. By filing an amendment application what she wants is to reduce the claim of damages from Rs.7.45 lakhs to Rs.3 lakhs. The respondents entered appearance and opposed the claim contending that she shall not be permitted to reduce the claim. The learned Subordinate Judge casually had disposed of the matter stating that since permission to sue as an indigent person for Rs.7,45,000/- is allowed there is no need to reduce the claim of damages in the plaint and so the plaint need not be amended. I feel, a litigant at least have a right to reduce the claim of damages in a case and in no way it will cause any prejudice to the defendants. It is also submitted that if the claim for such large amount is disallowed and only a portion is allowed, then the plaintiff will be liable to pay court fee for the entire amount and that is also given as one of the circumstances

which made the plaintiff to file an application for amendment of this nature. One cannot precisely find fault with the plaintiff for having developed such a thought. In any event, it is for the plaintiff to decide the quantum she requires to claim and it is not correct on the part of the court to put a rider on that. Therefore, the order suffers from serious infirmities and therefore, I allow the writ petition and as it is not causing any prejudice to the other side, the notice is dispensed with and writ petition is disposed of as follows:-

I.A.191/07 is set aside and the amendment application is allowed. The defendants, if they require, may file additional written statement.

M.N.KRISHNAN
Judge

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